

Comments on the March 19, 2014 Programmatic Agreement

The Oglala Sioux Tribe comments:

The plan in the PA to identify and protect cultural resources is inadequate because it allows unqualified Powertech employees to self-monitor and determine the locations of cultural sites when they think they encounter one using heavy equipment. This creates a situation in which cultural resources are very likely to be destroyed. A thorough, tribally-designed process for cultural resources identification and protection should be undertaken and completed before any permit is issued or any earth is moved.

The NRC Programmatic Agreement, referenced in the EPA National Historic Preservation Act Compliance document, is not valid, because one of the conditions of the PA, that a cultural resources survey be conducted, has not yet happened. The the PA's reliance on future analysis of the project area for cultural resources impacts and potential mitigation measures in problematic. The methodologies to be used for these future surveys and mitigation measure development are left without any specificity or clarification. The PA should not have been finalized without making provisions for an agreement with the Tribe on the methods and practices to be employed for a TCP survey. Only those matters that truly cannot be accomplished beforehand should be left for the staged, future study and analysis.

The Northern Arapaho THPO reviewed the final PA and provided the specific comments included in the table below.

The Standing Rock Sioux Tribe indicated they believed tribal information, suggestions and critical issues raised by the tribes were omitted from the PA and the PA should document tribal concerns with the NHPA consultation process. The Standing Rock THPO provided specific comments on the PA when it was still in draft below (TC initials of SRSTHPO rep).

Specific comments:

PA Section	Applicable regs	SRST THPO Comment
Beginning	§ 800.16	N. Arapaho THPO Comment: A definition section should be included before Stipulations on page 4. Definitions should include the following: DEFINITIONS Historic Properties - fifty (50) year old or older and listed

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PA Section	Applicable regs	SRST THPO Comment
		or eligible for listing on the National Register of Historic Places and / or considered a Traditional Cultural Property (TCP) by Native Americans. Properties - Same Definition as Historic Properties. Traditional Cultural Property (TCP) - an Ecological Knowledge Property and / or a Religious or Culturally Significant Property defined by Consulting THPOs.
WHEREAS #4 the ...proposed project area consists of approximately 10,580 acres (4,282 ha)	§ 800.4 Identification of historic properties. (a) <i>Determine scope of identification efforts.</i> In consultation with the SHPO/THPO	There was confusion about the description of the Area of Potential Effects (APE) through the process. Originally the APE included the Boundary of Potential Impact for Facility Construction and Operation

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	<p>, the agency official shall:</p> <p>(1) Determine and document the area of potential effects, as defined in § 800.16(d);</p> <p>§ 800.16 Definitions.</p> <p>(d) Area of potential effects means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist.</p>	<p>and Boundary of Potential Impact for Land Application Option for waste fluid disposal shown in Figure 1 of Appendix A, then Tribes were able to survey the entire project area during the 2013 Tribal Survey.</p>	<h1>Ex. 5 AC/DP</h1>
WHEREAS #8 disposal of treated ISR process fluids		<p>The disposal method been not yet been determined. This is problematic for</p>	

PA Section	Applicable regs	SRST THPO Comment
		determining the APE for this project based on only surveying the direct effects.
WHEREAS #9 phased process for compliance with Section 106		<p>TC4</p> <p>36CFR800.14 (a) (1) requires the federal agency to consult with the public in the development of alternate procedures for Section 106 compliance. This allows for the public to have their input into the development of alternate procedures. Where is the documentation that this was ever conducted?</p> <p>36CFR800.4 (2) also requires the federal agency to take into account the views of the tribes for a phased approach. The SRST has disagreed with this approach. The SRST disagrees with the determinations</p>

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PA Section	Applicable regs	SRST THPO Comment
		<p>of non-eligibility (TABLE 1) for any sites containing stone features.</p> <p>This needs to be addressed in the PA and in the phased approach</p>
<p>WHEREAS #10 p.2 the area of potential affects (APE) for the undertaking is the area at the Dewey-Burdock Project site and its immediate environs, which may be directly or indirectly impacted by construction and operations activities associated with the proposed project, as described in Appendix A; and</p>		<p>Why isn't it the entire project area included in the APE?</p>
<p>STIPULATION Measure 2) Identification and Evaluation of</p>		<p>the definition of the APE has changed from the direct effects to the</p>

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PA Section	Applicable regs	SRST THPO Comment
Historic Properties within the License Boundary: a) Appendix B provides information on the archaeological and Tribal cultural resource surveys and describes the historic properties identified within and adjacent to the boundary of the 10,590 acre project site. More than 300 cultural resources were identified.		licensed boundary.
STIPULATION Measure 3) Protection and Evaluation of Unevaluated Properties within the APE: a) Powertech will protect all unevaluated properties until an NHPA-eligibility determination	§ 800.4 Identification of historic properties. (a) <i>Determine scope of identification efforts.</i> In consultation with the SHPO/THPO, the agency	How will Powertech be conducting this? Who will be conducting this evaluation. In particular, if the site is a site of significance to the tribes what assurances do the tribes have that they will be consulted for their expertise on their sites?

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PA Section	Applicable regs	SRST THPO Comment
is complete, in accordance with 36CFR800.4(c).	official shall: (4) Gather information from any Indian tribe or Native Hawaiian organization identified pursuant to § 800.3(f) to assist in identifying properties, including those located off tribal lands, which may be of religious and cultural significance to them and may be eligible for the National Register, recognizing that an Indian tribe or Native Hawaiian organization may be reluctant to divulge specific information regarding the location,	The SRST-THPO is unagreeable with a private entity protecting our sites.

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PA Section	Applicable regs	SRST THPO Comment
	nature, and activities associated with such sites.	
STIPULATION Measure 3)b) If changes in the design or operation of the Project, including wellfield configurations, result in ground disturbance that could affect unevaluated properties, Powertech shall sponsor necessary supplemental research and/or field investigations prior to commencing any ground-disturbance activities.	§ 800.4 Identification of historic properties. (b) Identify historic properties. Based on the information gathered under paragraph (a) of this section, and in consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to properties within the area of potential effects, the agency	Who exactly will participate in this additional survey work? Will it just be the seven tribes who accepted the NRC forced identification requirements while ignoring the other 16 tribes who disagreed with this process?
STIPULATION Measure 3)c) Powertech must provide a written plan of its investigation methodology at least four months prior		TC23 This PA will take the tribes completely out of the consultation process according to this statement. Tribes have a

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PA Section	Applicable regs	SRST THPO Comment
to commencement of work, to enable the NRC and BLM to allocate staff resources for Section 106 reviews; additional review time may be necessary if NRC and BLM staff resources are limited or due to conditions beyond the staff's control.	official shall take the steps necessary to identify historic properties within the area of potential effects. (1) Level of effort. The agency official shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. The agency official shall take into account past planning,	right to comment on identification efforts per 36CFR800.2 yet this PA will take that right out of the tribes' hands. This was attempted by the applicant in the initial identification effort in August of 2011 when the NRC asked them to develop a plan for identification. That plan was unanimously disagreed to by every tribe.
STIPULATION Measure 3)e) Upon receipt of the Powertech investigation plan, the NRC, the BLM, consulting Tribes and the SD SHPO will have 30 days to review the proposed plan. If revisions to the plan are necessary, Powertech will circulate the revised investigation		TC24 This didn't work the last time this was planned and once again it is being proposed. It resulted in the NRC dividing the tribes against each other and this will be the case again for this project. The NRC attempted to mislead some tribes into accepting their proposal by misconstruing the

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PA Section	Applicable regs	SRST THPO Comment	
plan to the NRC, the BLM, consulting Tribes and the SD SHPO.	research and studies, the magnitude and nature of the undertaking and the degree of Federal involvement, the nature and extent of potential effects on historic properties, and the likely nature and location of historic properties within the area of potential effects. The Secretary's Standards and Guidelines for Identification provide guidance on this subject. The agency official should also consider other applicable	participation level of other tribes. There has been no good faith effort for identification on this project for the tribes who did not accept the Powertech handout forced upon them by the NRC. An ultimatum is not good faith.	<div>Ex. 5 AC/DP</div>

PA Section	Applicable regs	SRST THPO Comment
	professional , State, tribal and local laws, standards and guidelines.	
STIPULATION Measure 3)f) Upon approval of the investigation plan, Powertech will conduct supplemental research and/or field investigation. Testing will be conducted under the supervision of individuals meeting the Secretary's of the Interior's Professional Qualifications Standards. The report shall follow documentation standards outline in 36 CFR § 800.11.		TC25 The SRST-THPO is opposed to any testing of our sites of significance. We have stated this multiple times in consultation yet our expertise for evaluating our sites is being ignored by this PA.
STIPULATION Measure 3)j) When the NRC, BLM, and SD SHPO agree evaluated properties are		TC26 Include "in consultation with the tribes" as the SRST-THPO currently disagrees with the eligibility

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PA Section	Applicable regs	SRST THPO Comment
NRHP-eligible, avoidance of the properties will be the preferred option.....		determinations made thus far and since the PA is made to supplant the requirements of Section B of 36CFR800.
STIPULATION Measure 3)k) When the NRC, BLM, and SD SHPO make the determination that identified historic properties are not eligible for listing on the NRHP, no further review of consideration of the properties will be required under this PA.	§ 800.4 Identification of historic properties. (c) Evaluate historic significance. (2) Determine whether a property is eligible. If the agency official determines any of the National Register criteria are met and the SHPO/THPO agrees, the property shall be considered eligible for the National Register for section 106 purposes. If the agency official	TC27 Include "in consultation with the tribes" as the SRSP-THPO currently disagrees with the eligibility determinations made thus far and since the PA is made to supplant the requirements of Section B of 36CFR800.
STIPULATION Measure 3) l) When the NRC, BLM, and SD SHPO disagree on NRHP-eligibility for a cultural resource, the cultural resource cannot be avoided, or the disagreement		TC28 What provisions exist within this document if the tribes disagree with the determinations? This is never addressed throughout the entire document and since the RA will fulfill the NRC responsibilities

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PA Section	Applicable regs	SRST THPO Comment
is not resolved by further consultation, the NRC will refer the issue to the Keeper of the National Register (Keeper) and request a formal determination of eligibility, in accordance with 36 CFR § 800.4(c)(2). The ACHP may also request referral of an NRHP-eligibility determination to the Keeper.	determines the criteria are not met and the SHPO/THPO agrees, the property shall be considered not eligible. If the agency official and the SHPO/THPO do not agree, or if the Council or the Secretary so request, the agency official shall obtain a determination of eligibility from the Secretary pursuant to 36 CFR part 63. If an Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to a property off	for Section 106 compliance, the SRST-THPO would like the explained further.

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PA Section	Applicable regs	SRST THPO Comment	TC 50
	tribal lands does not agree, it may ask the Council to request the agency official to obtain a determination of eligibility.		
STIPULATION Measure 4) Assessments of Effects a) As part of its consideration of the effects of construction and operations on the landscape, the NRC conducted a line-of-sight analysis to assess the potential for adverse visual effects on all known historic properties located within three miles of the tallest buildings on both the Dewey and Burdock facilities.		TC29 Please provide the details of how this will be conducted. The tribes might have concerns not addressed by non-tribal personnel.	
STIPULATION Measure 5) Resolution of		TC31 This will require an amendment to	

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PA Section	Applicable regs	SRST THPO Comment
Adverse Effects a) The NRC will solicit suggestions from consulting parties concerning potential measures to avoid, minimize, or mitigate adverse effects on historic properties described in Appendix B after the PA is executed.		the PA. The SRST-THPO is concerned that an agreement is not binding if it is not included in this PA. The NRC should resubmit the PA with the proposals included so that no additional amendments or agreements are necessary. This further enforces the view that this PA is not a good faith effort but is rather a rush to issue the license.
STIPULATION Measure 5)b) The NRC and BLM, in consultation with consulting parties, will determine what treatment measures are appropriate to each adversely affected historic property.		TC32 This should be developed currently within this PA and not at some future date. Concerns for this are outlined in TC 27.
STIPULATION Measure 5)c) Treatment measures can		TC33 These treatment plans do not take into account any specialized

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include, but are not limited to the following:		expertise of the tribes for evaluating our sites of significance which can also be eligible under Criteria A-D. The SRST-THPO objects to this treatment plan as currently planned as it over emphasizes the use of archaeologists and not tribal expertise.
STIPULATION Measure 5)d) Following the development of potential treatment measures by consulting parties, to avoid, minimize or mitigate adverse effects, Powertech shall prepare a treatment plan for each affected historic property.		<p>TC34 Why is Powertech developing this for the Federal agency? This was attempted before and it failed to address tribal concerns. Why does the NRC keep relying on applicants to fulfill their Section 106 responsibilities?</p> <p>N. Arapaho THPO Comment: Any language with Historic Property should also include TCP.</p>

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PA Section	Applicable regs	SRST THPO Comment
		For example....Historic Property/TCP. page 7.) d.) Powertech shall prepare a treatment plan for each affected historic property/tcp...
STIPULATION Measure 5)e) In conjunction with the submission of their Plan of Activities, which detail construction and operations activities, for each year, Powertech will submit one or more draft treatment plans. A draft plan will identify properties that will be affected that year and measures that will be taken to avoid, minimize, or mitigate those effects. A draft treatment plan will be submitted for		TC35 This statement contradicts the statements concerning avoidance previously in the document. It doesn't sound like avoidance is the preferred option with such a statement.

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PA Section	Applicable regs	SRST THPO Comment
NRC and BLM review and approval four months prior to construction, so the NRC and BLM can appropriately allocate staff resources to the extent possible; additional time may be necessary in the event that NRC and BLM staff resources are limited due to conditions beyond the staff's control.		
<p>STIPULATION Measure 5)e) iii</p> <p>If monitoring by a qualified archaeologist and/or Tribal monitor is part of the strategy for resolving or preventing adverse effects, the treatment plan shall include a Monitoring Plan.</p>		<p>TC36 Who decides when a tribal monitor is necessary? Powertech does according to this document. Once again the NRC is letting the applicant call the shots for Section 106 compliance for this project.</p> <p>N. Arapaho THPO Comment: should include the language "with culturally</p>

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PA Section	Applicable regs	SRST THPO Comment	
		sensitive information"	
STIPULATION Measure 5)e) iv If data recovery is part of the strategy for resolving adverse effects, the treatment plan shall specify all details of STIPULATION Measure 5,e, the research design, field and laboratory work methodology (including mapping, geomorphological or other specialized studies, controlled scientific excavation methods, analyses of data recovered, and photographic documentation as appropriated), and report preparation.		TC37 The SRST-THPO will reiterate that testing should not occur on any stone feature site.	<h1>Ex. 5 AC/DP</h1>

PA Section	Applicable regs	SRST THPO Comment
STIPULATION Measure 5)f) Upon receipt of a draft treatment plan, the NRC will submit the draft treatment plan to all signatories and consulting Tribes for a 45 day review and comment period. The NRC will consider any comments received in writing from consulting parties within the specified review period.		TC38 The SRST-THPO has submitted numerous comments to the NRC that were subsequently ignored. Other tribes have also submitted comments that were ignored by the federal agency. The fact that only 7 of 23 tribes participated in the NRC ultimatum for identification is proof of this. What assurances do the tribes have that their comments won't just be used to document "good faith" consultation without addressing them as is currently the case with the NRC for all of their projects
STIPULATION Measure 5)j) If, after consultation, the NRC and the SD SHPO cannot agree on appropriate		N. Arapaho THPO Comment: Why aren't the tribes a part of agreed terms or appropriate terms?

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PA Section	Applicable regs	SRST THPO Comment
terms for the treatment plan, the NRC will refer the matter to the ACHP for comment pursuant to Stipulation 14—Dispute Resolution. The NRC will consider ACHP comments in making its final decision on measures to resolve the adverse effects.		Tribes left out for a reason?
STIPULATION Measure 6) Future Identification of Cultural Resources for Installation of Power Transmission Lines in Areas to be Determined: a) Powertech will notify the NRC and BLM in writing, if it determines that ground-disturbing activities will be required for the installation		TC39 These surveys should be conducted now so that a federal tie is maintained to the project. The SRST-THPO is more than a little concerned that the applicant will argue against having to involve the federal agency if there is no demonstrable tie to the transmission lines for the issuance of the

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of electrical transmission lines outside the license boundary . Powertech must provide written notification at least four months prior to commencement of work, to enable the NRC and BLM to allocate staff resources for Section 106 reviews; additional review time may be necessary if NRC and BLM staff resources are limited or due to conditions beyond the staff's control.		NRC permit or no BLM involved land and therefore no tribal involvement due to no Section 106 tie. Keystone XL utilized this same maneuver. This represents a complete lack of understanding of the definition of APE according to the 36CFR800.16 (d) and was a huge stumbling block in the scope of work process throughout 2011 and 2012. The NRC's own failures at properly defining the APE helped to create the impasse so that they would attempt to move the process forward in their own words.
STIPULATION Measure 6) b) Powertech must provide the- NRC, the BLM, and the SD SHPO a		TC40 The tribes did not accept the Powertech proposal for the initial survey at Dewey-Burdock yet this PA puts

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PA Section	Applicable regs	SRST THPO Comment
proposed work plan for an archaeological survey as part of the written notification. The plan will include methods for identification of all kinds of cultural properties within the transmission line corridor, including identification of properties of religious and cultural significance with the involvement of the Tribes. The proposed plan should also include report preparation requirements and schedules for the identification efforts.		the onus on them again to develop this portion of it. This will result in the same failures occurring once again with the vast majority of the tribes unable to participate in the identification efforts because it will not meet our required standards for identification efforts. Should a PA really be used to circumvent the 106 process with a flawed methodology that did not already work and enforce it? The SRST-THPO submits that it should not.
STIPULATION Measure 6) f) Powertech shall offer to provide appropriate financial compensation to Tribal		N. Arapaho THPO Comment: Powertech shall offer to provide appropriate financial compensation to (needs to specific)

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PA Section	Applicable regs	SRST THPO Comment	Ex. 5 AC/DP	
<p>Representative s for the work on the identification of properties of religious and cultural significance. The identification of properties of religious and cultural significance will occur at the same time or prior to identification of archaeological properties.</p>		<p>signatory tribes, all tribal representatives, who exactly? I see an issue where a tribal member shows up saying they represent and are not a part of THPO. The language here needs to be specific.</p>		
<p>STIPULATION Measure 6) g) The NRC will consult with the 23 consulting Tribes on identification of properties of religious and cultural significance. This consultation could include using an open site approach to identify and evaluate places of religious and cultural</p>		<p>TC41 The SRST-THPO and other tribes opposed this approach and continue to do so. It should not be acceptable as the preferred option as will the case. It has been demonstrated by the NRC that they will use it regardless of the protestations by the tribes furthering the disharmony among the tribes and the</p>		

PA Section	Applicable regs	SRST THPO Comment	Ex. 5 AC/DP	
significance to the Tribes.		<p data-bbox="489 164 695 1312">federal agency. The NRC used this approach for the Crow Butte facility without consulting the tribes for their feedback on such an approach. The disharmony created by the NRC in dividing the tribes continues to be felt across the India County today but the NRC does not care about the results of their actions as long as they can issue their permit and be done with the tribes they are happy to create this disharmony. Other federal agencies have followed this practice as well now that the NRC has created it.</p> <p data-bbox="489 1350 695 1532">N. Arapaho THPO Comment: Use "TCPS" instead of "properties" here</p>		

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		<i>The NRC will consult with the 23 consulting tribes on identification of "TCPs" with religious and cultural significance.</i>	
STIPULATION Measure 6) l) If the NRC, BLM, and SD SHPO make the determination that identified historic properties are not eligible for listing on the NRHP, no further review or consideration of the properties will be required under this PA.		<p>TC42 Will the process be the same flawed process that involved submitting the eligibility for sites for concurrence to the SD SHPO on the same day as the request for comments on eligibility determinations to the tribes?</p> <p>N. Arapaho TPHO Comment: I am against this entirely, our jobs as tribes is to negotiate through mitigation how sites can be preserved this language doesn't give tribes any say so and will allow destruction to</p>	<h1>Ex. 5 AC/DP</h1>

PA Section	Applicable regs	SRST THPO Comment
		sites without consulting tribes.
STIPULATION Measure 6) m) When the NRC and the SD SHPO disagree on NRHP-eligibility of cultural resource and the cultural resource cannot be avoided, and the disagreement cannot not be resolved by further by consultation, the NRC will refer the issue to the Keeper of the National Register (Keeper) and request a formal determination of eligibility, in accordance with 36 CFR § 800.4{c)(2). The ACHP may also request referral of an NRHP-eligibility determination to the Keeper. The decision of		TC43 What provisions will be in place if the tribes disagree on the eligibility?

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PA Section	Applicable regs	SRST THPO Comment
the Keeper is final.		
<p>STIPULATION Measure 7) Coordination with Other Federal Reviews</p> <p>In the event that the Powertech applies for additional approvals or other assistance from federal agencies for the undertaking and the undertaking remains unchanged, the approving agency may comply with Section 106 by agreeing in writing to the terms of this PA and notifying and consulting with SHPO and ACHP. Any necessary modifications to this PA will be in accordance with the amendment</p>		<p>TC44 This is highly subjective as the impacts from a new federal undertaking might be taken. A blanket statement such as this is inappropriate.</p>

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PA Section	Applicable regs	SRST THPO Comment	The EPA Addendum Notes
process in Stipulation 15.			
STIPULATION Measure 8) Confidentiality All consulting parties shall restrict disclosure of information concerning the location or other characteristics of historic properties, as well as properties of religious and cultural significance to Tribes,..		N. Arapaho THPO Comment: 2nd paragraph historic property/tcp	
STIPULATION Measure 9) Unanticipated Discoveries: In the event a previously unknown cultural resource is discovered during the implementation of the Dewey-Burdock Project, all ground disturbance activities shall halt within 150		TC45 included "but are not limited to,"	The EPA would like clarification of how the site will be approached to prevent disturbance of features before they are identified and protected e.g. not with a bulldozer

PA Section	Applicable regs	SRST THPO Comment	Ex. 5 AC/DP
<p>feet of the area of discovery to avoid or minimize impacts until the property is evaluated for listing on the NRHP by qualified personnel. The following additional steps shall be taken:</p> <p>a) Powertech will notify the NRC the BLM (if the site is on BLM land), and the SD SHPO of the discovery within 48 hours. Unanticipated discoveries may include artifacts, bone, features, or concentrations of these materials outside previously identified sites or in and adjacent to previously identified eligible and not eligible</p>		<p>N. Arapaho THPO Comment: Human Remains should NEVER be viewed or lumped into the same category as "finds" i.e. artifacts, features etc. This paragraph needs to be written to reflect that human remains are a priority (they are our ancestors) and should be respected. Private land owners can also have the opportunity to donate back to tribes if they should feel to do so.</p>	

PA Section	Applicable regs	SRST THPO Comment
<p>sites. Discoveries may also include stones and groups of stones that are out of place in their sedimentary contexts and may be parts of stone features. A "discovery" may also include changes in soil color and texture or content suspected to be man-made, such as burned soil, ash, or charcoal fragments.</p>		
<p>STIPULATION Measure 9) c) Powertech will have the discovery evaluated for NRHP eligibility by a professional who meets the Secretary of the Interior's Professional Qualifications Standards in Archaeology (36 CFR § 61).</p>		<p>TC46 What provision well be included in this evaluation for site of significance to tribes? The SRST-THPO has repeatedly commented about not testing sites of significance to the tribes.</p> <p>N. Arapaho THPO Comment:</p>

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PA Section	Applicable regs	SRST THPO Comment
		Tribes have no role in the discoveries? why not? Language needs to be clarified.
STIPULATION Measure 9) d) Powertech will provide results of evaluation and initial eligibility recommendation to the NRC and BLM within ten business days of the discovery. If Tribes want to participate in the evaluation efforts, they should contact Powertech within the specified review period.		N. Arapaho THPO Comment: Tribes should and never have to contact the proponent. The proponent isn't a Federal Government. Tribes have no business doing consultation on a Gov to Gov basis with a proponent. This paragraph needs clarification: <i>If tribes want to be a part of evaluations the Federal Agencies have to contact tribes give them 30 days to review</i> It should never be the tribes contacting a non-federal agency.
STIPULATION Measure 9) e) The NRC and/or BLM, in		TC47 What provisions will be put in place for the tribes to

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PA Section	Applicable regs	SRST THPO Comment
consultation with signatories and consulting Tribes, shall evaluate the cultural resources to determine whether they meet the NRHP criteria and request concurrence of the SD SHPO. Evaluation will be carried out as expeditiously as possible in accordance with 36CFR § 800.13(b).		properly identify these properties that might have significance to them to ensure that we can make informed decision regarding the properties' eligibility? Currently this PA process cuts the tribes from the process which has been the intent of the NRC and the applicant since September of 2012.
STIPULATION Measure 9) f) When the NRC, BLM, and SD SHPO agree evaluated properties are NRHP-eligible, avoidance of the properties will be the preferred option. When avoidance is unavoidable and adverse effects will result, adverse effects will be resolved in		TC48 This statement is redundant. Change the first avoidance to property or change unavoidable to not an option. The SRST-THPO believes that sites will not be avoided as the preferred option as the applicant is once again calling the shots as it were for the federal agency.

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PA Section	Applicable regs	SRST THPO Comment
accordance with Stipulation 6.		
STIPULATION Measure 9) g) If the NRC, BIM, and SD SHPO make the determination that identified cultural resources are not eligible for listing on the NRHP, no further review or consideration of the properties will be required under this PA.		TC49 Include "in consultation with the tribes" as we are being ignored throughout this PA. TC50 What provision will be in place if the tribes disagree with the agencies and SHPO determinations? None currently.
STIPULATION Measure 9) h) Human remains identified during ground disturbance activities will be treated in accordance with Stipulation 10—Human Remains and Appendix D—Treatment of Human Remains on		N. Arapaho THPO Comment: There is no private land process...even something written saying that private land owners can donate to the tribes is giving them an option.

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PA Section	Applicable regs	SRST THPO Comment	Final EPA Determination
State, Private, and BLM Land.			
STIPULATION Measure 10) Human Remains: d) Non-Native American human remains found on federal, state, or private land will also be treated in accordance with applicable state law.		TC52 Who will be making the determination that remains are non-native? All remains should be considered to be Native American until such time as they are proven otherwise.	
STIPULATION Measure 12) Qualifications In recognition of the special expertise Tribal experts have concerning properties of religious and cultural significance the standards of 36 CFR §§ 61 will not apply to knowledgeable , designated tribal representative s carry our identification and evaluation efforts for		TC53 Include "and eligibility determinations"	

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PA Section	Applicable regs	SRST THPO Comment	The EPA Addendum Notes
properties of religious and cultural significance to tribes.			
<p>STIPULATION Measure 13) Compliance Monitoring NRC affirms avoidance of adverse effects to historic properties remains the preferred course of action.</p> <p>b) Prior to initiating construction activities, Powertech will develop Monitoring Plan specific to the project, identifying specific areas, activities, and if appropriate, historic properties that require monitoring during development of the Project...</p>		<p>TC54 The plans developed thus far by Powertech have not been acceptable to the consulting tribes. Why does the NRC allow them to essentially make their decisions for them? This further enforces the widely held belief that Powertech is deciding the 106 process and not the federal agency.</p> <p>TC55 This statement allows for the applicant to decide which areas need monitoring for the tribes. I'm unaware of any action from our chairman which allows Powertech to decide for the Standing Rock Sioux Tribe which sites we</p>	EPA Addendum should include tribal input to monitoring plan

PA Section	Applicable regs	SRST THPO Comment
		require monitoring on. Please provide this documentation to the SRST-THPO so that we may discuss the issue with our chairman. This statement alone demonstrates the lack of good faith consultation which the NRC has embarked upon with this and all of their projects. The SRST-THPO and all tribes should be involved in this process as our concerns for our sites are certainly different than that of an applicant who refused to negotiate with the tribes after August 2012.
STIPULATION Measure 13) c) Powertech will engage the services of a Monitor with specific responsibilities to coordinate the		TC56 So Powertech is once again deciding who can monitor sites of significance to the Standing Rock Sioux Tribe. By tribal

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PA Section	Applicable regs	SRST THPO Comment	The EPA Addendum Notes
requirements of the monitoring plan, the treatment plans, and this agreement during project construction.		resolution that decision rests solely with the SRST-THPO office and not with an outside agency or entity. We can provide this resolution.	
STIPULATION Measure 13) c)i) The Monitor will meet the Secretary of the Interior's Professional Qualifications for Archaeology. Preference will be given to individuals meeting those qualifications who are employed by tribal enterprises, especially during phases of the monitoring program where sites with religious and cultural significance to the Tribes might be affected. In the case of an unanticipated		TC57 Currently, there are very few archaeologists in the Great Plains who would meet those criteria and short of Powertech hiring Ben Rhodd there is not a single one that can properly address Standing Rock Sioux Tribe concerns for our sites of significance. The SRST-THPO would have no confidence in any other archaeologist currently working on the Great Plains. Tribal monitors utilizing our specialized expertise must be employed in addition to any	Are there professional standards in the regs for Native American monitors? [HYPERLINK "https://scahome.org/about_sca/NAPC_Sourcebook/718_pdfsam_Sourcebook%20SCA%2010.2005%20fifth%20edition.pdf"]

PA Section	Applicable regs	SRST THPO Comment	Ex. 5 AC/DP
discovery or imminent threat to an avoided historic property, the Monitor shall have authority to stop certain construction activities.		Secretary of the Interior Standards qualified personnel. We will accept monitors from the following tribes to address our concerns in addition to our own: Oglala Sioux Tribe, Cheyenne River, Rosebud Sioux Tribe, and Sisseton Wahpeton Oyate.	
STIPULATION Measure 14) Dispute Resolution: Should any signatory to this PA object in writing to any actions proposed or to the manner in which terms of the PA are implemented, the NRC shall consult with the party to resolved the objection. When the NRC determines an objection cannot be		TC58 Will this be the same timely comments that were utilized in the eligibility determinations in which the tribes were given the information on the sites on the same day that the SD SHPO was asked to concur on the eligibility determination by the NRC?	

PA Section	Applicable regs	SRST THPO Comment
resolved, the NRC will: c) Prior to making a final decision of the dispute, the NRC will prepare a written response that addresses timely comments from signatories and consulting Tribes to the PA.		
STIPULATION Measure 14) d) The NRC will consider recommenda tions and comments made by the ACHP that are related to the objections.		TC59 Will the NRC be considering any comments made by the tribes in any disputes according to section 14?
STIPULATION Measure 15) Amendment: A signatory to this agreement may request that it be amended, whereupon the signatory parties will consult to reach a consensus on		TC60 So basically, if one signatory decides the amendment does not fit into their plans they can refuse to sign it and the amendment is voided. Who wrote this statement? This greatly favors

Ex. 5 AC/DP

PA Section	Applicable regs	SRST THPO Comment
the proposed amendment. Concurring parties will be provided an opportunity to consult and comment on the proposed amendment. An amendment will be effective on the date the amended PA is signed by all of the signatories to this PA. If a required signatory does not sign the amended PA, the amendment will be void. The amendment shall be appended to this PA as an Appendix.		the applicant in all amendment decisions. If they disagree with a proposed amendment that would impact their practices all they have to do is not sign it and it doesn't pass. This does not surprise the SRST-THPO as the NRC has been favoring the applicant and their timeline since the inception of this project.
STIPULATION Measure 15) Amendment: (continued) Any federal agency, including the EPA, may in the future decide to rely on this agreement in		TC61 The SRST-THPO opposes this statement being included as each undertaking must follow through its own Section 106 process and not adopt the incorrect and consistently

Ex. 5 AC/DP

PA Section	Applicable regs	SRST THPO Comment	Ex. 5 AC/DP
connection with satisfying its Section 106 responsibilities and, may join the agreement by adding its signature and circulating the amended agreement to the appropriate parties.		terrible policies of the NRC to complete their Section 106 process. I'm surprised the ACHP would even consider this!	
1 STIPULATION Measure 6) Termination b) In the event the PA is terminated, the signatories will comply with any applicable requirements of 36 CFR §§ 800.4 through 800.7 with regard to the original undertaking covered by this PA.		TC62 These sections were not followed in the original undertaking. What provisions will be in place to ensure that the same bad policies initiated by the NRC which continues to this day will not just continue.	
STIPULATION Measure 17) Duration: Implementatio n of the stipulations in this agreement must begin within five years from the		TC63 So what exactly will be followed during the intervening 5 years? There is no mention of what stipulation will be issued between the time the NRC	

PA Section	Applicable regs	SRST THPO Comment	Ex. 5 AC/DP
date of its execution. During that time, the NRC may consult with the signatories and concurring parties to amended the agreement in accordance with Stipulation 16. The agreement will be in place until ten years from the day of execution or the termination of the license.		licensed this project which will be the very same day they get this PA signs and 5 years from now when if must be enforced? Once again who wrote this section? It leans heavily in the favor of the applicant.	
STIPULATION Measure 18) Anti-Deficiency Act: Execution of this PA by the NRC, BLM, SD SHPO, ACHP, and Powertech and the implementation of its terms is evidence the NRC and BLM have taken into account the effects of this undertaking on historic		TC64 This statement is an outright fallacy and insulting to all of the tribes who participated in consultation with this project. In particular, with the tribes who objected to the ultimatum enforced identification effort endorsed by the NRC at the urging of third party consultants. The	

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properties and afforded the ACHP an opportunity to comment.		tribes who did not accept the forced ultimatum approach have never been afforded the opportunity to address our sites of significance within the license boundary in a manner consistent with the needs of our acceptable identification efforts even though Commissioner Magwood assured the SRST-THPO officer that they would be. PA's should not be used to circumvent responsibilities within the Section 106 process as they are being used in this project. It is extremely premature of the NRC and the ACHP to embark upon execution of a PA when there are still so many questions surrounding the	

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		<p>original identification effort and eligibility determinations. The NRC has and continues to ignore the tribes by stating they will not reopen identification under any circumstances. We had our chance according to them. That chance would not have resulted in a meaningful identification process being employed. The consulting tribes sent their objections to the NRC. The NRC chose to adopt it as the only solution anyway further enforcing the view that this project is run by the applicants timeline and not any meaningful good faith effort. By endorsing this PA; the ACHP is agreeing that a</p>		

PA Section	Applicable regs	SRST THPO Comment	Ex. 5 AC/DP	
		<p>process whereby 4 tribes totaling 8 people were given two weeks to survey over 10,000 acres is a process that is acceptable under Section 106. This is unacceptable and unconscionable of the ACHP to agree to the execution of this PA knowing full well the issues that the tribes continue to have for this project and its identification and eligibility determination process.</p>		

